

Collins CIV Cathy

From: Collins CIV Cathy
Sent: Monday, November 09, 2009 10:36 AM
To: M_HQMC_MCFCS_Civilian; M_HQMC_MCFCS_Directors/Deputies;
M_HQMC_MCFCS_Enlisted; M_HQMC_MCFCS_Officer
Cc: M_HQMC_LB
Subject: APM 09-23 FAC 2005-037 of October 14, 2009
Signed By: cathy.collins@usmc.mil

To All,

SUBJECT: Federal Acquisition Circular (FAC) 2005-37

BACKGROUND: The email below from Deputy Assistant Secretary of the Navy (DASN) highlights several key changes from the Federal Acquisition Circular (FAC) 2005-37 of 14 October 2009.

POLICY: FAC 2005-37 includes several changes that are identified as interim rules, however since the FAR has been modified to reflect these rules, the changes are effective immediately.

PROCEDURES: Recommend this FAC be reviewed in its entirety and the new regulations be implemented as applicable. The FAC can be accessed at the following address:

<http://farsite.hill.af.mil/reghtml/changes/fac/fac2005-37.htm>.

R/ cc

Cathy Collins
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-----Original Message-----

From: Ortiz, Evelyn CIV ASN(RDA), DASN(A&LM) [mailto:evelyn.ortiz@navy.mil]
Sent: Tuesday, October 20, 2009 11:21 AM
To: Collins CIV Cathy; Blackwell, Jessica A CIV NAVAIR; Brede CIV Rita; Brosious, Elizabeth A CIV SUP02; Carr, Deborah; Dickens, David CIV MSCHQ; Ellis, Sharon L CIV NAVSEA, SEA 02; Fanelli, Albert J CIV SUP02; Fisher, Ann W. USNCIV NAVAIR; Fisher, Cheryl CIV SPAWAR, 23100; Genesta Belton; Gerard Miskelly; Grau, Randall L CIV SPAWAR, 23100; Guzman, Serjio C CIV NAVFACHQ; Hoover, Susan M CIV M02; Isaacs, Glenda E CIV MSCHQ; Johnson, Barbara M CIV; Francom CIV Krista A; Lecates, Byron H CIV; Mobley, Linda USNCIV NAVAIR; Morgan, Andrew S CAPT NAVSEA, SEA 02; Murray, John M CIV NAVSEA, SEA 02; Myers CIV Donald R; Myers, Kathy CIV NFI; Randolph, Denise NRL Code 3201; Reilly, Sharon; Schwartz, Brett M CDR NAVICP, M851; Scott, Lesa P CIV NAVFAC HQ, ACQ; Sheila Roche; Smith, Robert G CIV NAVFAC HQ; Spillane, Kevin CIV MSCHQ; Ulmer, John C CIV NAVAIR, Air 2.1.1; Valdez, Michael CIV SPAWAR, 21100; Williams, Lorenzo E CDR MSCHQ
Cc: Ostrom, Ronald G CIV ASSTSECNAV RDA WASHINGTON DC, DASN AM; LeValley, Suzanne N CIV ASN(RDA); Bruce, Robbin S CIV ASN(RDA); Jones, Patrice CIV ASN(RDA), DASNALM; Bonaiuto, Sherry A CIV ASN (RDA), DASNA&LM; McNabb, Leland M CIV MSCHQ, N10; Lowrey, Bruce F CIV ASSTSECNAV RDA WASHINGTON DC, DASN AM; Weaver, Dwayne CIV ASN RDA, DASN ACQ; Ingram, Patrick CDR CDR ASN RDA, DASN A&LM; Dilli, Katrin CIV ASN(RDA), DASN(A&LM); Belton, Clarence CIV ASSTSECNAV RDA WASHINGTON DC, DASN AM; Trickett, Gabrielle CIV ASSTSECNAV RDA WASHINGTON DC, DASN ACQ; Johnson, Robert F. CIV ASSTSECNAV RDA WASHINGTON DC DASN(ACQ); Chase, Peter M. CIV ASSTSECNAV RDA WASHINGTON DC DASN(ACQ); Branch, Elliott B SES ASN (RDA), DASN (A&LM); Sharp, Bruce A SES ASN(RDA), DASN Acq & Log Mgt; Dean, Frank CIV ASN RDA, DASN ACQ
Subject: FAC 2005-037 of October 14, 2009

All,

The subject change, published in the Federal Register on October 14, 2009 contains new FAR rules that your contracting professionals should be aware of, the full description of which is available at <http://farsite.hill.af.mil/reghtml/changes/fac/fac2005-37.htm>. Some of the most important changes in this FAC include:

Final Rule, LIMITING LENGTH OF NONCOMPETITIVE CONTRACTS IN "UNUSUAL AND COMPELLING URGENCY" CIRCUMSTANCES (FAR CASE 2007-008), establishing certain limitations regarding contract terms for actions valued over the SAP threshold and that are awarded pursuant to FAR 6.302-2, Unusual and compelling urgency.

Interim Rule, USE OF COMMERCIAL SERVICES ITEM AUTHORITY (FAR CASE 2008-034), implementing Sec. 862 of the Duncan Hunter NDAA for FY 2009 (Pub. L. 110-417).

It affects procurements of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial market place. Specifically, services may be considered commercial ONLY if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

Final Rule, GAO ACCESS TO CONTRACTOR EMPLOYEES (FAR CASE 2008-026), converting the interim rule that amended FAR 52.215-2, Audits and Records--Negotiation, and FAR 52.214-26, Audit and Records--Sealed Bidding, to a final rule with no change. Allows GAO to interview current contractor employees when conducting audits. Implements Sec. 871 of the Duncan Hunter NDAA for FY 2009 (Pub. L. 110-417).

Interim Rule, LIMITATIONS ON PASS-THROUGH CHARGES (FAR CASE 2008-031), implementing Sec. 866 of the Duncan Hunter NDAA for FY 2009 (Pub. L. 110-417) and Sec. 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109-364). Adds new provision and contract clause requiring offerors/contractors to identify the percentage of work to be subcontracted and to provide information on indirect costs, profit/fee and value added concerning the subcontract work when subcontract work will exceed 70% of the total cost of work to be performed.

Interim Rule, AWARD FEE LANGUAGE REVISION Award Fee Language Revision (FAR Case 2008-008, implementing Sec. 814 of the John Warner NDAA of FY 2007 (Pub. L. 109-364) and Sec. 867 of the Duncan Hunter NDAA of FY 2009 (Pub. L. 110-417). FAR part 16 has been amended to provide further guidance relative to: (1) Award fees being linked to acquisition objectives in the areas of cost, schedule, and technical performance; (2) The percentage of award fee available for prescribed narrative ratings; (3) Award fees not being earned if the contractor's overall performance is judged to be below Satisfactory; (4) The analysis required in determining whether to use an award or incentive fee type contract or not, (5) Award-fee plan content; (6) The prohibition of the use of the award fee rollover concept; (7) The requirements relative to award and incentive fee data collection and performance measures to evaluate such data, and a reference to FAR 7.105 for consideration of this information in acquisition planning; and (8) The publishing of best practices.

The full-text of these rules and others covered by this FAC is available at the above link. The period for public comments on all INTERIM RULES noted above is 12/14/2009. Public comments may be sent via the e-Rulemaking portal available at <http://www.regulations.gov>; by facsimile at 202-501-4067; or by mail to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405. See FAC 2005-37 for specifics.

V/r

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OASN RD&A/DASN (A&LM)